



Prosecuting Attorneys Association of Michigan

116 W. Ottawa Street • Suite 200
Lansing, Michigan 48913
(517) 334-6060 – Fax: (517) 334-6351
www.michiganprosecutor.org

2005-2006 OFFICERS

President

Ronald J. Frantz
Ottawa

President-Elect

David G. Gorcyca
Oakland

Vice President

Charles H. Koop
Antrim

Secretary-Treasurer

John A. Hallacy
Calhoun

Immediate Past President

Stuart J. Dunning III
Ingham

BOARD OF DIRECTORS

Elected Directors

Frederick L. Anderson
Allegan

Larry J. Burdick
Isabella

Catherine M. Castagne
Cheboygan

Jeffrey R. Fink
Kalamazoo

W. Clayton Graham
Mackinac

Byron J. Konschuh
Lapeer

David S. Leyton
Genesee

Donald J. McLennan
Presque Isle

Christopher Ninomiya
Dickinson

Brian A. Peppler
Chippewa

Mark E. Reene
Tuscola

Chrystal Roach
Newaygo

Kym L. Worthy
Wayne

Henry C. Zavislak
Jackson

Active Past Presidents

Margaret M. Chiara
U.S. Atty. - Western District

William A. Forsyth
Kent

James J. Gregart
Kalamazoo

Brian L. Mackie
Washtenaw

David L. Morse
Livingston

Jeffery L. Sauter
Eaton

Joseph K. Sheeran
Bay

Charles D. Sherman
Clinton

Michael D. Thomas
Saginaw

Gary L. Walker
Marquette

Attorney General

Michael A. Cox

N.D.A.A. Director

Michael D. Thomas
Saginaw

April 18, 2006

The Honorable William VanRegenmorter
Michigan House of Representatives
PO Box 30014
Lansing, MI 48913

Re: HB 5153

Dear Representative VanRegenmorter:

The Prosecuting Attorneys Association of Michigan is opposed to HB 5153 in its current form. Prosecutors are very concerned about section 1, which provides immunity from prosecution if a person properly uses force under the standards set forth in the package. Essentially, this is like saying, "Prosecutors, we expect you to follow the law".

If there is a factual dispute regarding whether a person properly used deadly force, and the prosecutor decides to issue charges, then it's up to the judge or jury to decide at trial whether the defendant is guilty. Moreover, at trial, the prosecutor will have to prove beyond a reasonable doubt that it was clearly wrong for the homeowner to presume that he or she was in danger from the forcible entry. The substantial burden is on the prosecutor, so prosecutors are not going to charge anyone unless they can clearly prove beyond a reasonable doubt that the homeowner was not justified in using deadly force.

As you are aware, in civil cases a plaintiff and defendant engage in discovery and can have any immunity defense decided by a judge in a motion for summary judgment. That decision is based on a review of depositions, affidavits, admissions and other evidence obtained during the civil discovery process. There is no similar process in a criminal case. The bill states that the individual is immune from even being charged. The criminal justice process just does not lend itself to resolving immunity questions in the same manner as the civil justice system, and that is why immunity related to the facts of a possible crime has never been part of the criminal law.

In conclusion, we believe that Michigan's current law properly recognizes and protects a law abiding citizens right to self defense. To the extent we can codify that right without legalizing the inappropriate use of force, and without providing a new right of immunity in the criminal statute, we welcome the opportunity to work with you on this legislation. Thank you for considering our concerns.

Sincerely,

Ronald Frantz
President